

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-6985

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KENNETH B. KUBINSKI,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Fayetteville. Malcolm J. Howard, District Judge. (CR-93-28-H, CA-97-973-5-H)

Submitted: June 15, 2001

Decided: June 28, 2001

Before WIDENER, LUTTIG, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Neal Lawrence Walters, Charlottesville, Virginia, for Appellant.
Robert Edward Skiver, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Kenneth B. Kubinski seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000). In a supplemental brief, he asserts claims that the Government failed to disclose exculpatory material as required by Brady v. Maryland, 373 U.S. 83 (1963); that the trial court failed to instruct the jury in accordance with Richardson v. United States, 526 U.S. 813 (1999), regarding the continuing criminal enterprise count; and that his sentence violates Apprendi v. New Jersey, 530 U.S. 466 (2000). We have reviewed the record and the district court's opinion and find no reversible error as to its denial of relief on Kubinski's claim under Brady. We decline to consider Kubinski's claims under Richardson and Apprendi,* presented for the first time on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993). Accordingly, we deny a certificate of appealability and dismiss the appeal. United States v. Kubinski, Nos. CR-93-28-H; CA-97-973-5-H (E.D.N.C. July 1, 1999). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

* We recently held in United States v. Sanders, 247 F.3d 139 (4th Cir. 2001), that the new rule announced in Apprendi is not retroactively applicable to cases on collateral review. Accordingly, Kubinski's Apprendi claim is not cognizable.